

Appl. No. 10/725,251
Docket No. P146
Amdt. dated December 22, 2008
Reply to Office Action mailed on September 22, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 20 are pending in the present application. No additional claims fee is believed to be due. Claims 9 – 20 have been withdrawn as a result of an earlier restriction requirement. Claims 1, 6, 7 and 8 have been amended. Claim 5 has been canceled. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claim 8 has been rejected under 35 U.S.C. § 112, Second Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action states that the “term ‘semi-moist composition’ in Claim 8 is a relative term which renders the claim indefinite.” This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, Claim 8 has been amended to remove the term “semi-moist composition.” Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Speights

Claims 1 – 3 have been rejected under 35 U.S.C. § 102 as being anticipated by Speights et al. (US Patent No. 4,987,124)(“Speights”). Applicants respectfully traverse this rejection.

Speights discloses that a “method and composition for the inhibition of growth of Salmonella is provided.” *Abstract*. Speights, however, fails to teach each and every element of the claims. Claim 1 is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition, wherein the short chain oligofructose comprises 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and further comprising a fiber source additional to the short chain oligofructose. As best understood by Applicants, Speights fails to teach a companion animal composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition, wherein the short chain oligofructose

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comprises 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and further comprising a fiber source additional to the short chain oligofructose. As Speights fails to teach each and every element of the claims, Speights cannot be said to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Reinhart

Claims 1 – 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Reinhart et al (US Patent No. 5,776,524) (“Reinhart”). Applicants respectfully traverse this rejection.

Reinhart is directed to a:

pet food product which is useful for reducing the amount of harmful bacteria in the small intestine is provided. The pet food composition contains, on a dry matter basis, from about 0.2 to 1.5 weight percent of a fructooligosaccharide and is fed to a pet, such as a dog, cat or horse.

Abstract. Reinhart, however, fails to teach or suggest each and every element of the claims. Claim 1 is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition, wherein the short chain oligofructose comprises 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and further comprising a fiber source additional to the short chain oligofructose. Reinhart discloses a composition comprising from 0.2 to 1.5 weight percent fructooligosaccharide, on a dry matter basis. Col. 2, lines 45 – 49. The range as disclosed by Reinhart is greater than the range claimed in the current application. Furthermore, the only example provided in Reinhart discloses a composition comprising 1.00 % fructooligosaccharide. This level is much higher than the level claimed in the current application. Reinhart fails to teach or suggest a companion animal composition comprising from about 0.01% to 0.19% of short chain oligofructose and the only example of Reinhart utilizes fructooligosaccharides at a level of 1.00% which is higher than the range claimed in the current application. The Office has not put forth any reasoning as to why one of ordinary skill upon reviewing Reinhart would be directed to arrive at the composition of the current application, namely a composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition, wherein the short chain oligofructose comprises 1-kestose, nystose, and 1F-beta-

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fructofuranosylnystose and further comprising a fiber source additional to the short chain oligofructose. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Speights in view of Reinhart

Claims 1 – 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Speights in view of Reinhart. Applicants respectfully traverse this rejection.

Claim 1 is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition, wherein the short chain oligofructose comprises 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and further comprising a fiber source additional to the short chain oligofructose. As best understood by Applicants, Speights discloses that the “effective composition is present in an amount between about 0.05% by weight and about 5% by weight and more preferably between about 0.25% by weight and about 3% by weight and most preferably between about 0.25% by weight and about 1% by weight.” Col. 9, lines 10 – 15. However, as best understood by Applicants, the examples of Speights disclose the use of Neosugar in amounts not less than 0.375% by weight in a composition. In Speights, Example 14 discloses a composition comprising 0.75% by weight Neosugar-G, Example 15 discloses a composition comprising 2% Neosugar-P, Example 16 discloses a composition comprising 2% by weight Neosugar P, Example 17 discloses a composition comprising 0.375% by weight Neosugar-P, Example 18 discloses 0.75% by weight Neosugar-P, and Example 19 discloses 0.75% by weight Neosugar-P. As noted above, Reinhart discloses a composition comprising from 0.2 to 1.5 weight percent fructooligosaccharide, on a dry matter basis. Col. 2, lines 45 – 49. Additionally, the only example provided in Reinhart discloses a composition comprising 1.00 % fructooligosaccharide. Thus, both the range of fructooligosaccharides and the example of Reinhart are both higher than the claimed ranges of the current application. As best understood by Applicants, Speights and Reinhart, either alone or in combination, fail to provide any reasonable expectation of success in arriving at the claims of the current application. The working examples of Speights and Reinhart all demonstrate the use of Neosugar or fructooligosaccharides in amounts greater than 0.375% which is greater than the claimed ranges. As such, a combination of Speights and Reinhart would fail to provide one of ordinary skill with a reasonable expectation of success in arriving at the

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companion animal composition of the current application, namely a companion animal composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition, wherein the short chain oligofructose comprises 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and further comprising a fiber source additional to the short chain oligofructose. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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